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**AMERICAN PILOTS' ASSOCIATION**

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November 12, 1993

Ms. Terry Reynolds  
Reports Analyst  
Reports Analysis Division  
Federal Election Commission  
Washington, DC 20463

Dear Ms. Reynolds

Further to our telephone conversation of today, I am writing in response to your November 3, 1993 letter to Captain Jack Sparks, Treasurer of the American Pilots' Association Political Action Committee ("APA PAC").

As I indicated, the FEC has raised similar questions concerning contributions from the United New Jersey-Sandy Hook Pilots' Benevolent Association and the United New York-Sandy Hook Pilots' Benevolent Association in the past. On each occasion, the APA has answered those questions to the satisfaction of the FEC. I am enclosing copies of correspondence from 1990 on this matter.

To reiterate the information supplied in 1990, the United New Jersey-Sandy Hook Pilots' Benevolent Association and the United New York-Sandy Hook Pilots' Benevolent Association are two completely separate and distinct entities, each of which is a member of the American Pilots' Association. They are not labor organizations, corporations or collecting agents. They are also not political committees. Rather, the groups are unincorporated membership organizations and are contributing to the APA PAC in their own names pursuant to the advice rendered by the FEC in Advisory Opinion AP 1988-3 (April 29, 1988). Each of the groups is similar in all relevant aspects and particulars to the Pilots' Association for the Bay & River Delaware, the "test group" selected by the

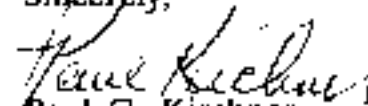
Ms. Terry Reynolds  
November 12, 1993  
Page 2

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FEC for the purpose of rendering the Advisory Opinion, and are thus allowed to rely on the advice expressed in that opinion.

If you need any additional information, please contact me.

Sincerely,

  
Paul G. Kirchner

93038662479

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November 2, 1990

FEDERAL EXPRESS

Robert B. DiNardo  
Reports Analyst  
Reports Analysis Division  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Mr. DiNardo:

We have your letter of October 19, 1990 directed to our client, the United New York Sandy Hook Pilots Benevolent Association ("New York Sandy Hook Pilots"). On June 6, 1990, your office sent a letter to another of our clients, the New Jersey Sandy Hook Pilots Benevolent Association, which raised the identical questions presented in the instant letter of October 19, 1990. Our response to your letter of June 6, 1990 directed to Ms. Elizabeth Jones on July 3, 1990 is annexed for your information.

It is our view that the New York Sandy Hook Pilots are not a "political committee" subject to the registration and reporting requirements of the Federal Election Campaign Act of 1971 ("the Act"). The New York Sandy Hook Pilots are an unincorporated association whose clearly stated purpose is to facilitate the provision of pilotage services. The New York Sandy Hook Pilots do not receive contributions and do not become a "political committee" solely by contributing to such a committee in the aggregate in excess of \$1,000 during a calendar year.

The New York Sandy Hook Pilots are permitted as a "person" under 2 U.S.C. Sec. 441(a)(1)(C) of the Act to make contributions up to \$5,000 per year to any political committee. Both the Federal Election Committee and the United States Supreme Court have interpreted the Act as imposing different regulatory schemes for different types of entities (see our July 3, 1990 letter, pages 2-4). Unincorporated associations are less regulated than corporations and unions.

It is our position that the New York Sandy Hook Pilots, an unincorporated association, is not a "political committee" subject to the registration and reporting requirements of the Act, but is a "person" permitted to contribute \$5,000 per year to any political action committee.

Very truly yours,

BECK & HALBERG

By

  
Herbert B. Halberg

Encl.

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October 2, 1990

Mr. Robert B. DiNardo  
Reports Analyst  
Reports Analysis Division  
Federal Election Commission  
Washington, D.C. 20463

RE: American Pilots' Association  
Political Action Committee  
Identification No. C00041061

Dear Mr. DiNardo:

This letter is submitted on behalf of the American Pilots' Association ("APA") and the American Pilots' Association Political Action Committee ("APA PAC") in response to your letter of September 26, 1990 to Captain Pat J. Neely, Jr., Treasurer, APA PAC. Information provided herein confirms and supplements what was conveyed by Captain Neely to Mr. Andrew Dodson, Reports Analysis Division, during a telephone conversation yesterday, October 1.

The questions that you indicate were raised by the FEC's preliminary review of the APA PAC's June Monthly Report would appear to be the result of some confusion in the identities of two different contributors to the APA PAC. According to your letter, the questions arise from the FEC's calculation that the aggregate year-

*Hurwits & Kirschner*

Mr. Robert B. DiNardo  
October 2, 1990  
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to-date receipt total from the United New York Sandy Hook Pilots Benevolent Association equals \$10,000. In support of that calculation, your letter encloses the Schedule A's from the APA PAC's Monthly Reports for April and for June, each of which lists a contribution of \$5,000.

3 The contribution listed on the Schedule A for the April  
6 Monthly Report is from the United New Jersey Sandy Hook Pilots  
4 Benevolent Association (the "New Jersey Pilots Association").  
2 In contrast, the contribution listed on the Schedule A for the  
6 June Monthly Report is from the United New York Sandy Hook Pilots  
6 Benevolent Association (the "New York Pilots Association").

8 These are two completely separate and distinct entities, each  
3 of which is a member of the APA. The New Jersey Pilots Association  
0 is an unincorporated association organized under the laws of New  
3 Jersey. It is composed of marine pilots licensed by the State of  
9 New Jersey and operating in the Port of New York/New Jersey. The  
New York Pilots Association is an unincorporated association organized under the laws of New York. It is composed of marine pilots licensed by the State of New York and operating in the Port of New York/New Jersey and in Long Island Sound.

There are no directors, officers, or members common to the two pilot groups. In fact, each group prohibits its members from belonging to the other. Each has its own business operations and

*Hanus & Hinchey*

Mr. Robert B. DiNardo  
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maintains separate accounting systems.

Under the laws of New Jersey and of New York, pilots licensed by one state are permitted by the other state to pilot ships in its waters of the Port of New York/New Jersey. This is commonly referred to as "reciprocal pilotage rights." As a result of the reciprocal rights, members of both groups operate in the same area, i.e., the Port of New York/New Jersey. The administrative offices of the two groups are located in the same building on Staten Island. That explains why the two groups have the same address.

Each group collects revenues derived from pilotage fees charged for services rendered by the pilots belonging to that group. Out of those revenues, each group pays its own "association" expenses and then divides the remaining net income among its pilots according to a formula adopted by each group. Funds of the two groups are not commingled.

Contributions are made by each of the two pilot groups to the APA PAC out of its own, separate revenues earned in the normal course of its business (pilotage services) operations and paid out of its own, normal operating account. (Copies of the checks are enclosed.) Each group is a "person" under 2 U.S.C. §441(a)(1)(c) permitted to make political contributions up to \$5,000 per year to a multi-candidate political committee, such as the APA PAC. The New Jersey Pilots Association and the New York Pilots Association

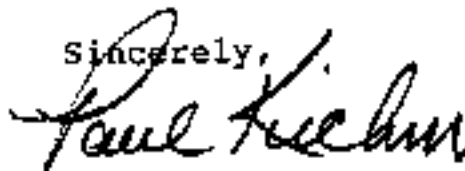
*Hurmus & Kirchner*

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October 2, 1990  
Page Four

are not corporations, labor organizations, collection agents,  
or political committees. The form of the contributions and their  
legal status under the FECA and applicable FEC regulations and  
advisory opinions were explained previously in response to FEC  
inquiries regarding the March 21, 1990 contribution from the New  
Jersey Pilots Association, which was disclosed on the APA PAC's  
April Monthly Report. For your convenience, I am enclosing copies  
of letters from this office and from counsel to the New Jersey  
Pilots Association responding to those prior inquiries.

I hope that this provides sufficient information to answer  
the questions raised in your letter. We would appreciate an  
immediate reply to this letter confirming your understanding and  
acceptance of the foregoing or indicating what further information  
you might require. The APA PAC is a relatively small committee  
with limited funds. So long as your letter operates to impose a  
contingent liability for the repayment of at least \$5,000, the APA  
PAC is severely inhibited in its ability to perform its intended  
function. We would like this matter to be resolved as soon as  
possible.

Sincerely,



Paul G. Kirchner

PGK/jfk  
Enclosures  
cc: Captain Pat J. Neely, Jr.



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CABLE ADDRESS  
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OF COUNSEL  
MICHAEL S. HORWITZ

July 3, 1990

FEDERAL EXPRESS

Ms. Elizabeth Jones  
Reports Analyst  
Reports Analysis Division  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Ms. Jones:

Your letter dated June 6, 1990 to our client the United New Jersey Sandy Hook Pilots Benevolent Association (Sandy Hook Pilots) regarding application of the Federal Election Campaign Act of 1971, as amended (the Act), has been referred to our attention. Based on our analysis of the relevant statutes, regulations, United States Supreme Court decisions and FEC Advisory Opinions, it is our view that the Sandy Hook Pilots are not a political committee nor an organization subject to compliance with the Act.

Under 2 USC Sec. 431(4)(A) of the Act, "political committee" is defined as "any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year." The Sandy Hook Pilots, an unincorporated association whose clearly stated purpose is to facilitate the provision of pilotage services, is nevertheless not a political committee for the purpose of collecting or spending money to influence federal elections. The Sandy Hook Pilots do not receive contributions. Nor do they become a "political committee" by contributing to the American Pilots' Association Political Action Committee (APA-PAC) or to another political committee in the aggregate in excess of \$1,000 in a calendar year.

According to 2 USC Sec. 441a(a)(1)(C), a "person" can contribute up to \$5,000 to any political committee in any calendar year. "Person" is defined to include "an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons." 2 USC Sec. 431(11). Corporations and labor organizations, however, are prohibited by 2 USC Sec. 441b(a) from making any contributions to political committees other than the special segregated funds permitted under Sec. 441b(b)(2)(C). These entities are thus not governed by Sec. 441a(a)(1)(C) and are more heavily regulated than other organizations (e.g., unincorporated associations). See, California Medical Association v. FEC 453 US 182, 185 n.2 (1981).

In California Medical Association v. FEC, supra, at 201, the United States Supreme Court emphasizes this difference in regulation as follows:

"(U)ncorporated associations (as "persons") may contribute to candidates, to candidates' committees, to national party committees, and to all other political committees while corporations and unions are absolutely barred from making any such contributions. In addition, multicandidate political committees are generally unrestricted in the manner and scope of their solicitations; the segregated funds that unions and corporations may establish...are carefully limited in this regard...The differing restrictions placed on individuals and unincorporated associations, on the one hand, and on unions and corporations, on the other, reflect a judgment by Congress that these entities have differing structures and purposes, and that they therefore may require different forms of regulation in order to protect the integrity of the electoral process." (Emphasis added.)

Of particular interest in this context is the Joint Dissenting Opinion to Advisory Opinion 1988-3, June 23, 1988, pp. 5-6, which discusses whether the Delaware River Pilots Association, another unincorporated association similar to the Sandy Hook Pilots, would become a political committee and be required to register and to file reports if it made contributions to the APA-PAC. Commissioners Elliot and Aikens refer to footnote 2 of the majority opinion, where the majority states that their opinion "does not

address whether the Delaware River Pilots Association would itself become a political committee ... if (it) makes contributions to APA-PAC." The dissenting Commissioners disagree with the majority's "speculative analysis of the facts." In their view, "this issue is unnecessarily raised and left unanswered, although a clear answer exists in The Supreme Court's opinion in California Medical Association v. FEC ("CMA") 453 U.S. 182 (1981)." The dissent states at pages 5-6:

"In CMA, the Supreme Court held that an unincorporated association, as a 'person,' could contribute \$5,000 to its associated multicandidate committee...(yet) (n)owhere in that opinion did the Court conclude, state, or even hint at the possibility that a \$5,000 contribution to an associated multi-candidate committee...by an unincorporated association would trigger political committee status for the association. Nor did our General Counsel even attempt to advocate that position before the Commission in the Matter Under Review which gave rise to that case."

Other advisory opinions issued in recent years have acknowledged that different types of entities are regulated differently under the Act (associations and individuals vis-a-vis unions and corporations). In Advisory Opinion 1981-50, the FEC determined that a law firm's partnership political contribution plan, which served to evaluate and make contributions to candidates or political committees and to properly attribute such contributions to both the partnership and to the individual partners, did not rise to the level of a political committee operation because the firm had a clearly defined purpose (the practice of law) which had nothing to do with the making of political contributions.

Advisory Opinion 1982-13 also approved a similar arrangement implemented by a different law firm. That opinion states:

"(W)here the articles of partnership (or partnership agreement) set forth the type of activity to be engaged in by the partners, such as the practice of law, the Commission has never characterized any partnership as a political committee...The fact that the partnership may make separate contributions of up to \$1,000 each to several candidates for Federal office (which total over \$1,000 in a calendar year) is not viewed as a basis for

BECK, HALBERG & WILLIAMSON.

converting the partnership into a political committee for purposes of the Act." Advisory Opinion 1982-13, p. 4.

For the above reasons, the Sandy Hook Pilots should not be subject to the registration and reporting requirements of the Act. The pilots association, as a "person," is permitted under Sec. 441a(a)(1)(C) to make political contributions up to \$5,000. Its clear purpose is to facilitate pilotage services. The association does not become a "political committee" solely because it contributes to such a committee. Such a broad reading of the Act would not be consistent with the way the Supreme Court and the FEC itself has in the past interpreted the legislation.

Very truly yours,

BECK, HALBERG & WILLIAMSON

By   
Herbert B. Halberg

cc: Mr. Tony Raymond

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June 12, 1990

Ms. Elizabeth Jones  
Reports Analyst  
Reports Analysis Division  
Federal Election Commission  
Washington, D.C. 20463

Dear Ms. Jones:

Further to our telephone conversation of yesterday afternoon, I am writing in response to your June 5 letter to Captain Pat J. Neely, Jr., Treasurer of the American Pilots' Association Political Action Committee ("APA PAC"). As I indicated, our firm serves as Counsel to the APA as well as to the APA PAC, and we can therefore address the concerns expressed in your letter.

Please be advised that the United New Jersey Sandy Hook Pilots Benevolent Association and the Hudson River Pilots' Association are not labor organizations, corporations or collecting agents as suggested in your letter. They are also not political committees. Rather, these groups are unincorporated membership organizations and are contributing to the APA PAC in their own names pursuant to the advice rendered by the Federal Election Commission in Advisory Opinion AO 1988-3 (April 29, 1988). Both of these groups are similar in all relevant aspects and particulars

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Ms. Elizabeth Jones  
June 12, 1990  
Page Two

to the Pilots' Association for the Bay and River Delaware, the "test group" selected by the Commission for the purpose of rendering the Advisory Opinion, and are thus allowed to rely on the advice expressed in that opinion.

We would appreciate an immediate response to this letter either confirming your understanding and acceptance of the foregoing or indicating what further information you require. The immediacy of this request is based on the deadlines expressed in your letter. Thank you for your attention in this matter.

Sincerely,

*Paul G. Kirchner*  
Paul G. Kirchner

PGK/wmm

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**Federal Election Commission**  
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E.S.  
PREPARER

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